

REMARKS

Claims 29 and 31-33 are canceled herein, with claims 1-18, 20, 25, 30 and 34-41 being previously canceled. Claims 19, 21-24 and 26-28 remain pending in the application.

Allowability of Claims 24 and 26-28

The Applicants thank the Examiner for the indicating that claims 24 and 26-28 are allowed.

Indefiniteness of claims 29 and 31-33 under 2nd paragraph of 35 U.S.C. §112

The Office Action rejected claims 29 and 31-33 as allegedly being indefinite under 35 USC 112.

Claims 29 and 31-33 are canceled herein, mooted the rejection in that regard. It is respectfully requested that the rejection be withdrawn.

35 USC 101 Rejection of Claims 19 and 21-23

The Office Action alleged that claims 19 and 21-23 are directed toward non-statutory subject matter as being directed to "software". The Applicants respectfully disagree.

As the Examiner acknowledges, claims 19 and 21-23 recite a "message router". However, claims 19 and 21-23 also recite a "protocol gateway" and a "client device". The Examiner alleges that "although the claim recites a 'message router', the claimed message router is merely comprised of a 'load balancer module' and a 'routing module'", with the broadest reasonable interpretation of the claimed "module" comprising software. (see Office Action, page 4)

The Examiner is respectfully directed toward the recent Federal Circuit decision of *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. Oct. 30, 2008). The *Bilski* majority characterizes its machine-transformation test as "the governing test for determining patent eligibility of a process under section 101." Under this test, a claim is patent-eligible if (and as applied in *Bilski* apparently only if): (1) it

is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing." As explained by the Court, the test serves as a proxy for assessing the more fundamental concern – ensuring that the claim does not seek to impermissibly "preempt the use of a fundamental principle." Applying *Bilski* to the instant case, claims 19 and 21-23 are tied to the particular machine or apparatus of the claimed "message router", a "protocol gateway", and a "client device". See also *In re Comiskey*, 499 F.3d 1365, 84 USPQ2d 1670

Claims 19 and 21-23 are statutory as written. Applicants respectfully request that the rejection be withdrawn.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,



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